

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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|---------------------------|---|-------------------|
| M&S ADVISORY GROUP, INC., | : | |
| | : | NO. 1:02-CV-00522 |
| Plaintiff, | : | |
| | : | |
| | : | |
| v. | : | ORDER |
| | : | |
| | : | |
| EYEMART EXPRESS, LTD., | : | |
| | : | |
| Defendant. | : | |

Plaintiff M&S Advisory Group ("M&S") filed the instant suit in the Hamilton County Court of Common Pleas against Defendant Eyemart Express, Ltd. ("Eyemart"), raising claims based on an alleged unlawful termination of his services and failure to pay upon a contract therefor. After it was removed to this Court on July 15, 2002 (doc. 1), Eyemart moved to compel disclosure of certain documents demanded during discovery and for sanctions, pursuant to Fed. R. Civ. P. 37(b)(2) and/or this Court's inherent power, for spoliation of this evidence (doc. 46). Furthermore, Eyemart seeks a jury instruction that the alleged spoliation gives rise to an inference that the evidence destroyed was unfavorable to M&S, as well as attorneys' fees for composing the motion at issue (Id.).

On May 14, 2004, the assigned Magistrate Judge issued a Report and Recommendation (doc. 66) recommending that Eyemart's motion to compel be denied and that its motion for sanctions,

including the requested jury instruction and attorneys' fees, be denied as well. On May 27, 2004, Eyemart filed objections to the Report and Recommendation (doc. 67), and M&S filed a response thereto (doc. 68). Upon de novo review, the Court finds the Magistrate Judge's Report and Recommendation well reasoned and proper.

Accordingly, the Defendant's Motion To Review/Objections To the Report and Recommendation Of the Magistrate Judge (doc. 67) is OVERRULED. The Magistrate Judge's Report and Recommendation (doc. 66) is ADOPTED IN ITS ENTIRETY. The Defendant's Motion To Compel and Motion For Sanctions With Supporting Affidavit (doc. 46) is DENIED.

SO ORDERED.

Dated: June 29, 2004

/s/ S. Arthur Spiegel
S. Arthur Spiegel
United States Senior District Judge